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3 UNITED STATES DISTRICT COURT  
4 EASTERN DISTRICT OF WASHINGTON

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

Apr 30, 2018

SEAN F. MCAVOY, CLERK

5  
6 MICHAELLE MARIE OSBORNE,

7 Plaintiff,

8  
9 v.

10 COMMISSIONER OF SOCIAL  
11 SECURITY,

12 Defendant.  
13

No. 2:17-CV-0146-JTR

ORDER GRANTING, IN PART,  
PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT AND  
REMANDING FOR ADDITIONAL  
PROCEEDINGS

14 **BEFORE THE COURT** are cross-motions for summary judgment. ECF  
15 No. 13, 14. Attorney Jeffrey Schwab represents Michaelle Marie Osborne  
16 (Plaintiff); Special Assistant United States Attorney Ryan Lu represents the  
17 Commissioner of Social Security (Defendant). The parties have consented to  
18 proceed before a magistrate judge. ECF No. 7. After reviewing the administrative  
19 record and the briefs filed by the parties, the Court **GRANTS, IN PART**,  
20 Plaintiff's Motion for Summary Judgment; **DENIES** Defendant's Motion for  
21 Summary Judgment; and **REMANDS** the matter to the Commissioner for  
22 additional proceedings pursuant to 42 U.S.C. § 405(g).

23 **JURISDICTION**

24 Plaintiff filed applications for Disability Insurance Benefits and  
25 Supplemental Security Income on March 14, 2014, and February 13, 2014,  
26 respectively, alleging disability since July 1, 2012, due to anxiety, depression,  
27 fearfulness, PTSD, panic attacks, fatigue and body aches. Tr. 367, 374, 443. The  
28 applications were denied initially and upon reconsideration. Administrative Law

1 Judge (ALJ) Mark Kim held hearings on July 27, 2016, Tr. 43-70, and November  
2 1, 2016, Tr. 71-109, and issued an unfavorable decision on November 22, 2016,  
3 Tr. 21-32. The Appeals Council denied Plaintiff's request for review on February  
4 21, 2017. Tr. 1-6. The ALJ's November 2016 decision thus became the final  
5 decision of the Commissioner, which is appealable to the district court pursuant to  
6 42 U.S.C. § 405(g). Plaintiff filed this action for judicial review on April 20, 2017.  
7 ECF No. 1, 4.

### 8 **STATEMENT OF FACTS**

9 Plaintiff was born on June 1, 1967, and was 45 years old on the alleged onset  
10 date, July 1, 2012. Tr. 367, 374. Plaintiff earned a GED and has completed some  
11 college. Tr. 75-76. She has past work as a caregiver, a unit clerk and a cashier.  
12 Tr. 97, 101-102. Plaintiff stated she believed she could no longer work due to her  
13 physical issues and inability to stay focused. Tr. 93.

14 Plaintiff testified at the administrative hearing on November 1, 2016, that  
15 she had nerve issues with her legs (beginning in September 2016), pain in her right  
16 shoulder, problems with her neck causing tingling and reduced strength in her  
17 arms/hands (brachial plexus), and heart issues/chest pain. Tr. 78-81. Plaintiff also  
18 described anxiety/PTSD, Tr. 83-86, 94, migraine headaches, Tr. 88, tremors, Tr.  
19 90-91, and difficulty with concentration, Tr. 92.

20 Plaintiff has a long history of alcohol-related problems. Plaintiff testified  
21 she had been sober since September 2016 and had a six-month period of sobriety  
22 prior to the September relapse. Tr. 77-78.

### 23 **STANDARD OF REVIEW**

24 The ALJ is responsible for determining credibility, resolving conflicts in  
25 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,  
26 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de novo*, with  
27 deference to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*,  
28 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed

only if it is not supported by substantial evidence or if it is based on legal error. *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is defined as being more than a mere scintilla, but less than a preponderance. *Id.* at 1098. Put another way, substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Richardson v. Perales*, 402 U.S. 389, 401 (1971). If the evidence is susceptible to more than one rational interpretation, the Court may not substitute its judgment for that of the ALJ. *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of Social Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999). If substantial evidence supports the administrative findings, or if conflicting evidence supports a finding of either disability or non-disability, the ALJ's determination is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987). Nevertheless, a decision supported by substantial evidence will be set aside if the proper legal standards were not applied in weighing the evidence and making the decision. *Browner v. Secretary of Health and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988).

### **SEQUENTIAL EVALUATION PROCESS**

The Commissioner has established a five-step sequential evaluation process for determining whether a person is disabled. 20 C.F.R. §§ 404.1520(a), 416.920(a); *Bowen v. Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through four, the burden of proof rests upon the claimant to establish a prima facie case of entitlement to disability benefits. *Tackett*, 180 F.3d at 1098-1099. This burden is met once a claimant establishes that a physical or mental impairment prevents the claimant from engaging in past relevant work. 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4). If a claimant cannot perform past relevant work, the ALJ proceeds to step five, and the burden shifts to the Commissioner to show that (1) the claimant can make an adjustment to other work; and (2) specific jobs which the claimant can perform exist in the national economy. *Batson v. Commissioner of Social Sec. Admin.*, 359 F.3d 1190, 1193-1194 (2004). If a claimant cannot make

1 an adjustment to other work in the national economy, a finding of “disabled” is  
2 made. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v).

### 3 **ADMINISTRATIVE DECISION**

4 On November 22, 2016, the ALJ issued a decision finding Plaintiff was not  
5 disabled as defined in the Social Security Act.

6 At step one, the ALJ found Plaintiff had not engaged in substantial gainful  
7 activity since July 1, 2012, the alleged onset date. Tr. 23.

8 At step two, the ALJ determined Plaintiff had the following severe  
9 impairments: cervical spine degenerative disk disease, right brachial plexopathy,  
10 right shoulder impingement, posttraumatic stress disorder (PTSD), major  
11 depressive disorder, generalized anxiety disorder, and alcohol dependence. Tr. 23.

12 At step three, the ALJ found Plaintiff did not have an impairment or  
13 combination of impairments that meets or medically equals the severity of one of  
14 the listed impairments. Tr. 24.

15 The ALJ assessed Plaintiff’s Residual Functional Capacity (RFC) and found  
16 Plaintiff could perform light exertion work, with the following nonexertional  
17 limitations: she should never climb ladders, ropes, and scaffolds or crawl; she can  
18 occasionally push and pull with her bilateral upper extremities, but she should  
19 never reach overhead with her dominant right upper extremity and only  
20 occasionally reach overhead with her non-dominant left upper extremity; she can  
21 occasionally reach in all other directions with the bilateral upper extremities; she  
22 can frequently handle, finger, and feel with her dominant right hand; she should  
23 avoid all exposure to excessive vibrations and hazards like moving machinery and  
24 unprotected heights; she can perform simple, routine tasks in a low stress  
25 environment, defined as only occasional changes; and she can have occasional  
26 interaction with the public and coworkers. Tr. 25-26.

27 At step four, the ALJ found Plaintiff was unable to perform her past relevant  
28 work as a caregiver, unit clerk and cashier. Tr. 30.

However, the ALJ determined at step five that, based on the testimony of the vocational expert, and considering Plaintiff's age, education, work experience and RFC, Plaintiff was capable of making a successful adjustment to other work that exists in significant numbers in the national economy, including the jobs of small products assembler, electronics worker and garment sorter. Tr. 31-32.

The ALJ thus concluded Plaintiff was not under a disability within the meaning of the Social Security Act at any time from July 1, 2012, the alleged onset date, through the date of the ALJ's decision, November 22, 2016. Tr. 32.

## ISSUES

The question presented is whether substantial evidence supports the ALJ's decision denying benefits and, if so, whether that decision is based on proper legal standards.

Plaintiff contends the ALJ erred by (1) failing to properly weigh the medical opinion evidence of record; (2) improperly rejecting Plaintiff's subjective complaints; and (3) relying on an incomplete hypothetical at step five of the sequential evaluation process.

## DISCUSSION

### A. Medical Opinion Evidence

Plaintiff argues the ALJ erred by failing to properly consider the medical opinion evidence of record. ECF No. 13 at 10-16. Plaintiff specifically asserts the ALJ erred by rejecting the reports of examiner Mark Duris, Ph.D., examiner Aaron Burdge, Ph.D., and reviewing physician Brent Packer, M.D. *Id.*

In a disability proceeding, the courts distinguish among the opinions of three types of acceptable medical sources: treating physicians, physicians who examine but do not treat the claimant (examining physicians) and those who neither examine nor treat the claimant (nonexamining physicians). *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996). A treating physician's opinion carries more weight than an examining physician's opinion, and an examining physician's opinion is

1 given more weight than that of a nonexamining physician. *Benecke v. Barnhart*,  
2 379 F.3d 587, 592 (9th Cir. 2004); *Lester*, 81 F.3d at 830.

3 In making findings regarding the medical opinion evidence of record, the  
4 ALJ must set forth specific, legitimate reasons that are based on substantial  
5 evidence in the record. *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989).  
6 The ALJ must also set forth the reasoning behind his or her decisions in a way that  
7 allows for meaningful review. *Brown-Hunter v. Colvin*, 806 F.3d 487, 492 (9th  
8 Cir. 2015) (finding a clear statement of the agency's reasoning is necessary  
9 because the Court can affirm the ALJ's decision to deny benefits only on the  
10 grounds invoked by the ALJ). "Although the ALJ's analysis need not be  
11 extensive, the ALJ must provide some reasoning in order for us to meaningfully  
12 determine whether the ALJ's conclusions were supported by substantial evidence."  
13 *Treichler v. Comm'r of Soc. Sec. Admin.*, 775 F.3d 1090, 1103 (9th Cir. 2014).

14 **1. Dr. Duris**

15 Dr. Duris completed a Department of Social and Health Services (DSHS)  
16 Psychological/Psychiatric evaluation of Plaintiff on November 25, 2014. Tr. 1348-  
17 1352. Dr. Duris diagnosed PTSD; alcohol dependence, in sustained partial  
18 remission; and major depressive disorder, recurrent (marked), controlled with  
19 medication. Tr. 1350. He opined that Plaintiff had "marked" restrictions in her  
20 abilities to adapt to changes in a routine work setting, communicate and perform  
21 effectively in a work setting, complete a normal work day and work week without  
22 interruptions from psychologically based symptoms, and maintain appropriate  
23 behavior in a work setting. Tr. 1350-1351.

24 The ALJ accorded only "partial weight" to Dr. Duris' report, finding the  
25 noted limitations were not supported by the record and that Dr. Duris' own  
26 examination findings showed Plaintiff had no abnormalities, thus the limitations  
27 were based on Plaintiff's unreliable subjective reporting. Tr. 29.

28 ///

1 Dr. Duris' findings are not unsupported by the evidence of record. As noted  
2 by Plaintiff, ECF No. 13 at 12, the evidentiary record reveals Plaintiff continued to  
3 have mental health issues throughout the relevant time period in this case with no  
4 indication that her symptoms resolved. Tr. 575 (depressed and tearful); 582-584  
5 (alcohol intoxication and anxiety); 586-587 (alcohol intoxication, anxiety and  
6 PTSD); 805 (anxiety with depression and alcohol abuse); 969-970 (noted  
7 limitations by Dr. Burdge); 1170, 1178 and 1181 (PTSD and depression); 1194  
8 (suicidal gesture); 1227 (PTSD); 1370-1372 (PTSD, depression and anxiety); 1387  
9 (anxious and depressed); and 1436 (significant underlying general anxiety with  
10 acute situational exacerbation). Furthermore, the ALJ does not indicate what  
11 record evidence specifically undermined Dr. Duris' opinions. *See Brown-Hunter*,  
12 806 F.3d at 492. The ALJ erred by finding the mental limitations assess by Dr.  
13 Duris lacked record support.

14 Contrary to the second reason provided by the ALJ for according only  
15 partial weight to Dr. Duris' report, there is no indication that Dr. Duris' assessed  
16 limitations were based entirely on Plaintiff's subjective reporting. Instead, the  
17 record reflects Dr. Duris completed Personality Assessment Inventory (PAI)  
18 testing, Tr. 1349, as well as the preliminary mental status exam, Tr. 1351-1352.  
19 The ALJ must not substitute his own interpretation of the examination findings for  
20 that of the examining medical professional. *See Day v. Weinberger*, 522 F.2d  
21 1154, 1156 (9th Cir. 1975) (finding it is improper for an ALJ to act as his own  
22 medical expert). While the "Mental Status Exam" results found Plaintiff within  
23 normal limits, Tr. 1352, it is apparent that other testing revealed deficits upon  
24 which Dr. Duris relied in completing his assessment.

25 The Court concludes the ALJ erred by failing to provide cogent, specific,  
26 and legitimate reasons for rejecting examining physician Duris' assessed mental  
27 limitations. A remand is required for reconsideration of Dr. Duris' assessment and  
28 for further development of the record.

1           **2.     Dr. Burdge**

2           Almost a year earlier, on December 16, 2013, Dr. Burdge also performed a  
3 psychological/psychiatric evaluation of Plaintiff on behalf of DSHS. Tr. 967-972.  
4 Dr. Burdge diagnosed PTSD; major depressive disorder, single episode,  
5 unspecified; and alcohol dependence, in sustained partial remission. Tr. 968. He  
6 opined that Plaintiff would have a “marked” limitation in her ability to perform  
7 activities within a schedule, maintain regular attendance, and be punctual within  
8 customary tolerances without special supervision and “severe” limitations in her  
9 abilities to complete a normal work day and work week without interruptions from  
10 psychologically based symptoms and to maintain appropriate behavior in a work  
11 setting. Tr. 969-970. Dr. Burdge recommended a chemical dependency  
12 assessment or treatment, but also opined that her impairments would persistent  
13 following 60 days of sobriety. Tr. 970.

14           The ALJ rejected the report of Dr. Burdge finding that, as with Dr. Duris,  
15 the noted limitations were not supported by the record and that the examination  
16 findings showed very little abnormality, thus the limitations were based on  
17 Plaintiff’s unreliable subjective reporting. Tr. 29. The ALJ additionally noted that  
18 Plaintiff’s sobriety was questionable at the time of the exam based on evidence that  
19 Plaintiff was admitted to the hospital for alcohol withdrawal both before and after  
20 the date of Dr. Burdge’s examination. Tr. 29.

21           As discussed above with respect to Dr. Duris, the evidence of record shows  
22 that Plaintiff continued to have mental health issues throughout the relevant time  
23 period in this case with no indication that her symptoms resolved. *See supra*. The  
24 ALJ additionally failed to indicate what specific record evidence undermined Dr.  
25 Burdge’s opinions. The ALJ’s first reason is thus unsupported.

26           Likewise, there is no indication that Dr. Burdge’s assessed limitations were  
27 based on Plaintiff’s subjective reporting. The record reflects Dr. Burdge  
28 completed PAI testing which revealed post-traumatic stress, issues related to



1 alcohol abuse and depression, Tr. 968, as well as a preliminary mental status exam  
2 which was not entirely within normal limits, Tr. 971-972. Dr. Burdge relied on  
3 testing and observations in completing his assessment; therefore, the ALJ's second  
4 reason for according only partial weight to Dr. Burdge's opinions is also  
5 unsupported.

6 Finally, the ALJ's suggestion that Plaintiff's sobriety was questionable is  
7 unfounded. The ALJ did not find that Plaintiff's alcohol abuse was material in this  
8 case. *See* 20 C.F.R. §§ 404.1535(a), 416.935(a); *Bustamante v. Massanari*, 262  
9 F.3d 949 (9th Cir. 2001). In any event, Dr. Burdge specifically found that  
10 Plaintiff's impairments were not the result of alcohol or drug use. Tr. 970.

11 Based on the foregoing, the ALJ shall additionally reassess the evaluation of  
12 Dr. Burdge on remand and provide a detailed analysis related to the weight  
13 assigned to his opinions.

### 14 **3. Dr. Packer**

15 On January 22, 2016, Dr. Packer reviewed Plaintiff's medical records for  
16 DSHS and assessed Plaintiff's physical functioning capacity based on that review.  
17 Tr. 1462-1463. Dr. Packer opined that Plaintiff could perform sedentary work,  
18 with only two hours of standing and walking and with gross/fine restrictions,  
19 primarily related to cervical radiculopathy. Tr. 1462. He additionally opined that  
20 Plaintiff's physical condition appeared to be independent of any current drug  
21 addiction or alcoholism. Tr. 1462.

22 The ALJ accorded "partial weight" to Dr. Packer's assessment, finding the  
23 limitation to sedentary work with an inability to stand or walk for six hours was not  
24 supported by the medical evidence of record. Tr. 30.

25 The ALJ failed to describe what specific evidence contradicted the opinions  
26 of Dr. Packer. *See Brown-Hunter*, 806 F.3d at 492 (finding the agency must set  
27 forth reasoning behind its decisions in a way that allows for meaningful review). If  
28 the ALJ fails to specify his rationale, a reviewing court will be unable to review

1 those reasons meaningfully without improperly “substitut[ing] our conclusions for  
2 the ALJ’s, or speculat[ing] as to the grounds for the ALJ’s conclusions.” *Brown-*  
3 *Hunter*, 806 F.3d at 492 quoting *Treichler*, 775 F.3d at 1103. Because the ALJ  
4 failed to identify what evidence specifically contradicted the opinions of Dr.  
5 Packer, the Court finds the ALJ’s rationale for discounting the report is not  
6 properly supported. Moreover, as argued by Plaintiff, ECF No. 13 at 15-16, there  
7 is extensive objective medical evidence which would appear to conflict with the  
8 ALJ’s finding that there was “no evidence” supporting Dr. Packer’s conclusions.  
9 Tr. 1486-1487 (markedly decreased tone in right upper limb, markedly decrease  
10 sensory to pinprick and vibration in right shoulder, and marked abnormalities on  
11 EMG testing); 1492 (results of MRI of the brachial plexus); 1490 (results of MRI  
12 of cervical spine); 1398 (right shoulder impingement); 1391 (right hand flexor  
13 tendonitis); 1416 (results of shoulder x-ray); and 1518 (results of MRI of right  
14 shoulder). Accordingly, the Court finds the ALJ erred by failing to provide cogent,  
15 specific, and legitimate reasons for according “partial weight” to Dr. Packer’s  
16 assessed physical limitations.

## 17 **B. Plaintiff’s Subjective Complaints**

18 Plaintiff also contends the ALJ erred by improperly rejecting her subjective  
19 complaints. ECF No. 13 at 16-19.

20 It is the province of the ALJ to make credibility determinations. *Andrews*,  
21 53 F.3d at 1039. However, the ALJ’s findings must be supported by specific  
22 cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Once  
23 the claimant produces medical evidence of an underlying medical impairment, the  
24 ALJ may not discredit testimony as to the severity of an impairment because it is  
25 unsupported by medical evidence. *Reddick*, 157 F.3d 715, 722 (9th Cir. 1998).  
26 Absent affirmative evidence of malingering, the ALJ’s reasons for rejecting the  
27 claimant’s testimony must be “specific, clear and convincing.” *Smolen*, 80 F.3d at  
28 1281; *Lester*, 81 F.3d at 834. “General findings are insufficient: rather the ALJ

1 must identify what testimony is not credible and what evidence undermines the  
2 claimant's complaints." *Lester*, 81 F.3d at 834; *Dodrill v. Shalala*, 12 F.3d 915,  
3 918 (9th Cir. 1993).

4 The ALJ concluded Plaintiff's medically determinable impairments could  
5 reasonably be expected to cause her alleged symptoms; however, Plaintiff's  
6 statements concerning the intensity, persistence and limiting effects of those  
7 symptoms were not entirely consistent with the medical and other evidence of  
8 record. Tr. 27. The ALJ listed the following reasons for finding Plaintiff's  
9 subjective complaints not persuasive in this case: (1) the objective medical  
10 evidence did not support the level of impairment claimed; (2) Plaintiff's activities  
11 were inconsistent with her allegations of disabling functional limitations; (3)  
12 Plaintiff failed to follow through with medical treatment and continued to drink  
13 throughout her treatment; (4) Plaintiff gave inconsistent reports regarding her  
14 alcohol use; and (5) Plaintiff admitted she was told not to work so she could obtain  
15 disability benefits. Tr. 27-28.

16 While some of the reasons provided by the ALJ for discounting Plaintiff's  
17 testimony may be supported by the evidence of record, this matter must be  
18 remanded for additional proceedings to remedy defects in light of the ALJ's  
19 erroneous determination regarding the medical opinion evidence of record. *See*  
20 *supra*. Accordingly, on remand, the ALJ shall also reconsider Plaintiff's  
21 statements and testimony and reassess what statements, if any, are not credible and,  
22 if deemed not credible, what specific evidence undermines those statements.

### 23 **C. Step Five**

24 Plaintiff next contends the ALJ erred at step five of the sequential evaluation  
25 process by relying on the vocational expert's testimony in response to an  
26 incomplete hypothetical; a hypothetical that did not reflect all of Plaintiff's  
27 limitations. ECF No. 13 at 19-20.

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1 As determined above, the ALJ erred by providing inadequate reasoning for  
2 rejecting the opinions of Drs. Duris, Burdge and Packer. *See supra*.  
3 Consequently, the ALJ's RFC determination is not supported by substantial record  
4 evidence in this case and must be reevaluated.

5 On remand, the ALJ shall reassess Plaintiff's RFC and, if necessary, obtain  
6 supplemental testimony from a vocational expert with respect to the new RFC  
7 determination.

### 8 CONCLUSION

9 Plaintiff argues the ALJ's decision should be reversed and remanded for the  
10 payment of benefits. The Court has the discretion to remand the case for additional  
11 evidence and findings or to award benefits. *Smolen*, 80 F.3d at 1292. The Court  
12 may award benefits if the record is fully developed and further administrative  
13 proceedings would serve no useful purpose. *Id.* Remand is appropriate when  
14 additional administrative proceedings could remedy defects. *Rodriguez v. Bowen*,  
15 876 F.2d 759, 763 (9th Cir. 1989). In this case, the Court finds that further  
16 development is necessary for a proper determination to be made.

17 On remand, the ALJ shall reconsider Plaintiff's physical and psychological  
18 limitations. The ALJ shall reassess the opinions of Drs. Duris, Burdge and Packer  
19 and all other medical evidence of record relevant to Plaintiff's claim for disability  
20 benefits. The ALJ shall further develop the record by directing Plaintiff to undergo  
21 consultative physical and psychological examinations. The ALJ shall reevaluate  
22 Plaintiff's subjective complaints, formulate a new RFC determination, obtain  
23 supplemental testimony from a vocational expert, if necessary, and take into  
24 consideration any other evidence or testimony relevant to Plaintiff's disability  
25 claim.

26 If the ALJ determines Plaintiff is disabled and her disability involves drug  
27 and alcohol abuse ("DAA"), the ALJ shall conduct an additional analysis. *See* 42  
28 U.S.C. § 423(d)(2)(C) ("An individual shall not be considered to be disabled for

1 purposes of this subchapter if alcoholism or drug addiction would . . . be a  
2 contributing factor material to the Commissioner's determination that the  
3 individual is disabled."). In that case, the ALJ must then determine whether DAA  
4 is "material" to the finding that Plaintiff is disabled, i.e., whether Plaintiff's  
5 impairments would disable her independent of the limitations resulting from DAA.  
6 20 C.F.R. §§ 404.1535, 416.935.

7 **IT IS ORDERED:**

8 1. Plaintiff's Motion for Summary Judgment, **ECF No. 13**, is  
9 **GRANTED IN PART.**

10 2. Defendant's Motion for Summary Judgment, **ECF No. 14**, is  
11 **DENIED.**

12 3. The matter is **REMANDED** to the Commissioner for additional  
13 proceedings consistent with this Order.

14 4. An application for attorney fees may be filed by separate motion.

15 The District Court Executive is directed to file this Order and provide a copy  
16 to counsel for Plaintiff and Defendant. Judgment shall be entered for Plaintiff and  
17 the file shall be **CLOSED.**

18 DATED April 30, 2018.



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A handwritten signature in black ink, appearing to be "M" or "Rodgers", written over a horizontal line.

25  
26  
27  
28

JOHN T. RODGERS  
UNITED STATES MAGISTRATE JUDGE